HIGH COURT OF UTTARANCHAL AT NAINITAL
ORIGINAL JURISDICTION

Dated : Nainital the 21st day of July 2005

Criminal Misc. Bail Application No. 590/2005

Order on the bail application of accused

CRIMINAL SIDE

Smt. Babli Man @ Virajman
W/o late Sri Sudesh Singh
R/o Hariyana Farm
Tehsil Kichha
District U.S. Nagar .....Applicant

Versus

State of Uttaranchal .....Opposite Party

Arising out of case crime No.971/2005
U/s 147, 148, 149, 307, 325, 504,
506, 394, 397, 323, 120-B I.P.C.
P.S. Kichha
District – U.S. Nagar

Hon'ble J.C.S. Rawat, J.

Heard Sri V.B.S. Negi learned Advocate assisted by Sri H.S. Rawal learned counsel for the applicant, Smt. Usha Mann-injured in-person and Sri Nandan Arya learned A.G.A.

2. I have perused the case-diary. According to the prosecution version, an FIR was lodged on 28.4.2005 by Sunil Kumar-injured against the applicant & others alleging therein that when he was in the Chakbandi office alongwith his aunt-Usha Mann, the applicant came there with 10-12 persons and assaulted them. It has been further alleged that they were beaten by *'Laat', 'ghoosha'* and 'bat' (solid surface) of rifle/gun. On the basis of the said FIR, the case was registered as case crime No. 971/2005 under sections 147, 148, 149, 307, 325, 504, 506, 394, 397, 323 & 120-B I.P.C. against the present applicant and others. Thereafter,

the statement of the injured-Usha Mann was recorded on the same day i.e. 28.4.2005. The statement of Sunil Kumar (inured) was recorded on the next day of the incident. Thereafter, raids were conducted by the I.O. for several times to apprehend the accused persons, but the accused could not be apprehended. On 15.5.2005 the I.O. tried to record the statement of the Asstt. Consolidation Officer (A.O.C.) On 28.5.2005 the applicant was arrested and thereafter on 28.6.2005 the statement of Jagdish Prasad was recorded. Jagdish Prasad, A.O.C. has stated that there was some quarrel between the parties inside their office. Thereafter, they came out from the office and *"Hathapai"* took place outside the office and he had not narrated the rest of the incident. On 30.6.2005 the statement of previous I.O. was recorded. Thereafter, on 13.7.2005 the statements of Sant Ram & Khem Karan were recorded, who have stated that there was some fight between the parties with the kicks and fists and the applicant-accused has also used the 'bat' of rifle/gun to cause the injury to the injured persons. They have further stated that the applicant had no intention to shoot the injured-Usha Mann.

3. The learned counsel for the applicant contended that the applicant has not the intention to kill the injured. The learned counsel for the applicant further contended that no report of the alleged incident was lodged by any official of the Consolidation Department. It was further contended on behalf of the applicant that as per the statement recorded under section 161 Cr.P.C. Smt. Usha Mann-injured has admitted that civil, revenue & criminal litigations are pending between the parties. It was contended that there are several

litigations between the parties pending before the subordinate courts, High Court and the Hon'ble Supreme Court. It was further contended that the A.O.C. and other witnesses have not corroborated the factum of the incident, which have been narrated by the injured persons with regard to the commission of offence. The A.O.C., Khem Karan and Sant Ram have stated that only a quarrel took place in which the injured persons were beaten by kicks & fists and by the 'bat' of rifle/gun. It was further contended that the quarrel took place for sometime and as such the victims should have sustained so many injuries. The injured-Usha Mann has sustained four injuries and Sunil Kumar also sustained the simple injuries. It was further contended that ocular version does not stand corroborated with the medical evidence. The learned counsel for the applicant contended that the injured has stated in her statement that the applicant snatched some articles i.e. purse, chain, tops (ornament) etc. at the time of incident, but Khem Karan and Sant Ram have stated in the statement recorded under section 161 Cr.P.C. that the accused party did not snatch any ornaments etc.

4. It was further contended that if the applicant would have an intention to kill the injured person, the applicant would have fired upon the injured at the time of incident and the injured would not have been beaten by kicks & fists and *'bat'* of rifle/gun. It was also contended that perusal of the statement recorded under section 161 Cr.P.C. and FIR, it seems that the *'Marpeet'* took place for sometime. If the applicant would have the intention to kill the injured, the applicant would have fired upon the injured. Intent

which is a state of mind cannot be proved by precise direct evidence; as a fact it can only be detected or inferred from other factors. Some of the relevant considerations may be the nature of the weapon used, the place where injuries were inflicted, the nature of the injuries and the circumstances in which the incident took place. Perusal of the record it is revealed that the injured sustained the injuries by kicks and fists and by the ‘bat’ of rifle/gun. It is further on record that Sunil Kumar was taken to railwayline from where he fled away and the accused fired upon him but he could not sustained any injury by the firearm. The injuries sustained by Usha Mann-injured are not dangerous to life according to the medical report. It can be said at this stage that there is a complete lack of evidence of intention to cause such injuries for which the accused is said to have been committed the offence under section 307 IPC. According to the medical report, the fracture was shown in the ribs, which is found to be grievous. It was further contended that the injury on the ear from where the blood was oozing is not shown on the medical report. It was further contended that the accused has also sustained the injuries. It was further contended that there is cross-version of the incident. On 29.4.2005 a cross report was also lodged by the applicant-Babli Mann against the injured persons under sections 325, 504, 506 IPC. It was further contended that Babli Mann and Kulwant Singh also sustained the injuries at the time of incident.

5. Lastly, the learned counsel for the applicant contended that the applicant is a lady and as such she is entitled to get the benefit of the provisions of the Code of Criminal Procedure. The learned counsel for

complainant, who appeared in person, refuted the contentions and contended that the applicant-accused has not come to the Court with the clean hands and concealed the material facts. As such, the bail application is liable to be rejected.

6. In support of her argument, the complainant has filed the Misc. Application bearing No.509/2005 under section 340 Cr.P.C. with the prayer to proceed against Babli Mann @ Viraj Mann & Bhanu Singh for the offences of perjury and to direct the authority concerned to recover the Car No. DL6 CG 6559 (Ikon), by which the accused came to the place of incident. It has been further alleged in the said application that the applicant has filed the some fake, false and fabricated documents i.e. traffic challan. However, the accused has made the plea of 'alibi' and the Car, in which the accused came at the place of incident, was challaned in Etah, U.P. A denial to that effect was filed by way of certificate procured from the Transport Department that no such challan has been made.

7. I have considered the respective contentions of the parties. In view of the case diary, statements recorded u/s 161 Cr.P.C., medical reports and other relevant documents filed by the parties, I am of view that there is a force in the contentions of the learned counsel for the applicant. Considering the facts, contentions and totality of the circumstances of the case, it is a fit case for bail.

8. So far as the application under section 340 Cr.P.C. is concerned, I am of the view that the said application cannot be decided by this Court at this stage. The

application under section 340 Cr.P.C. filed by the complainant may be considered by the trial court. The complainant may file fresh petition under section 340 Cr.P.C. before the court below, who will decide the same in accordance with law. The application under section 340 Cr.P.C. is disposed of accordingly.

9. Let the applicant-accused be released on bail on executing a personal bond each and two sureties each in the like amount to the satisfaction of the C.J.M. concerned.

Let the certified copy be supplied to the parties by tomorrow i.e. 22.7.2005

Dated 21.07.2005 (J.C.S. Rawat, J.)

LSR